

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into Southern California Edison Company's Electric Line Construction, Operation and Maintenance Practices.

Investigation 01-08-029
(Filed August 23, 2001)

Respondent.

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING ASIDE SUBMISSION, DIRECTING FURTHER
BRIEFING, AND SCHEDULING CLOSING ARGUMENT
BEFORE THE ASSIGNED COMMISSIONER**

1. Setting Aside Submission and Directing Further Briefing

On December 20, 2002, Southern California Edison Company (Edison) filed a Petition to set Aside the Submission for the Taking of Further Evidence. The Commission's Consumer Protection and Safety Division (CPSD) filed an opposition thereto on January 10, 2003, and Edison filed a reply on January 15.

Edison argues that CPSD for the first time advised the Commission at oral argument that CPSD was not advocating a "perfectionist" standard of General Order (GO) compliance, but rather that Edison should make a good faith effort to meet its legal obligations to maintain a safe and reliable system. Edison further argues that by advocating a "good faith" standard, CPSD presents for the first time a new argument not presented during the evidentiary hearings and in the briefing. Edison believes that CPSD must present new testimony in order to support its new argument, including comparative data from other utilities,

testimony on the relative seriousness of different nonconforming conditions, and Edison's alleged lack of good faith in situations where accidents occurred.

Edison argues that in the record to date, CPSD offered evidence that nonconformances or violations of the GOs occurred and then argued that penalties were justified. In rebuttal, Edison concentrated most of its effort in explaining its inspection and maintenance program, and showing how infeasible and unsafe a "perfectionist" standard would be. Edison believes that CPSD should offer additional testimony on a "good faith" standard and that Edison should have a corresponding rebuttal opportunity.

CPSD opposes Edison's motion, arguing that the Commission, not CPSD, defines the standard of compliance with GOs that is expected of regulated utilities. While CPSD can make recommendations, the Commission is charged with interpreting and applying the GOs. CPSD states that the existing record evidence demonstrates that "what CPSD seeks is very, very far from perfection and that Edison's programs do not even meet a 'good faith' standard." (CPSD Opposition at p. 2.) CPSD further argues that data from other utilities is irrelevant, that it only inspected about 2% of Edison's system, and therefore it is not seeking a "perfectionist" standard of GO compliance. Although CPSD argues it has not asked the Commission to rule on the existence or the absence of Edison's good faith, it believes the record permits such deliberation. Therefore, CPSD opposes the motion.

CPSD generally has the burden of proof in this investigation and has stated it does not wish to present further evidence. However, Edison should have the opportunity to respond to CPSD's argument that Edison should make a good faith effort to meet its legal obligations to maintain its system in a safe condition and that, based on the record, it has not done so. This investigation

would also benefit by CPSD's further elaboration on this argument. I therefore set aside submission and direct that the parties brief the following issue based on the existing record: Is it appropriate to apply a "good faith" standard to evaluate Edison's GO compliance in this investigation? If so, precisely define the standard and how it should apply to the existing record.

Parties should file concurrent opening briefs on this issue no later than Friday, March 14, 2003 and concurrent reply briefs no later than Tuesday, March 25, 2003.

2. Closing Argument

Commissioner Kennedy has recently been appointed to this Commission and is now the Assigned Commissioner of this proceeding. Because Commissioner Kennedy was not a member of the Commission last December, she was unable to participate in the oral argument before the full Commission. I therefore schedule closing argument before Commissioner Kennedy on Tuesday, April 1, 2003, at 1:30 p.m., in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. The closing argument will be argument on the entire case, including the supplemental briefing ordered by this ruling. A new submission date will be set at the closing argument, or other appropriate time.

The argument's schedule is as follows:

Convening the proceeding (5 minutes)

CPSD's opening presentation (20 minutes)

Edison's opening presentation (20 minutes)

CPSD's rebuttal comments (10 minutes)

Edison's rebuttal comments (10 minutes)

The time allocated above includes the time necessary for any questions that the Commissioner might ask during the parties' presentations. There may be additional questions at the conclusion of the presentations.

If parties use handouts or briefing boards at the argument, they should follow the rules for the use of handouts and briefing boards set forth in my November 22, 2002 ruling in this investigation.

IT IS RULED that:

1. The submission date of January 15, 2003 is set aside in order for the parties to file supplemental briefs on the issue set forth in Section 1 of this ruling. The parties shall file concurrent opening briefs on Friday, March 14, 2003 and concurrent reply briefs on Tuesday, March 25, 2003.

2. Closing argument will be heard before assigned Commissioner Kennedy on Tuesday, April 1, 2003, at 1:30 p.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. The schedule for the closing argument is set forth in Section 2 of this ruling. If parties use handouts or briefing boards at the argument, they should follow the rules for the use of handouts and briefing boards set forth in my November 22, 2002 ruling in this investigation.

3. A new submission date will be set at the closing argument or other appropriate time.

Dated February 21, 2003, at San Francisco, California.

/s/ JANET A. ECONOME

Janet A. Econome
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Aside Submission, Directing Further Briefing, and Scheduling Closing Argument Before the Assigned Commissioner on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated February 21, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.